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WT 07-27

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Submitted 03/28/2007 at 15:33:29  
File Number 0002897896

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**General Information**

2) (Select only one) ( <b>AM</b> ) NE - New      RO - Renewal Only      AU - Administrative Update      NT - Required Notifications MD - Modification      RM - Renewal/Modification      WD - Withdrawal of Application      EX - Requests for Extension of Time AM - Amendment      CA - Cancellation of License      DU - Duplicate License      RL - Registered Location/Link	
3a) If this application is for a Developmental License, Demonstration License, or a Special Temporary Authorization (STA), enter the code and attach the required exhibit as described in the instructions. Otherwise enter 'N' (Not Applicable).	( <b>N</b> ) <b>D</b> <b>M</b> <b>S</b> <b>N/A</b>
3b) If this application is for Special Temporary Authority due to an emergency situation, enter 'Y', otherwise enter 'N'. Refer to Rule 1.915 for an explanation of situations considered to be an emergency.	( ) <b>Yes</b> <b>No</b>
4) If this application is for an Amendment or Withdrawal, enter the file number of the pending application currently on file with the FCC	File Number <b>0002897896</b>
5) If this application is for a Modification, Renewal Only, Renewal/Modification, Cancellation of License, Duplicate License, or Administrative Update, enter the call sign of the existing FCC license. If this is a request for Registered Location/Link, enter the FCC call sign assigned to the geographic license.	Call Sign <b>KNKQ401</b>
6) If this application is for a New, Amendment, Renewal Only, or Renewal/Modification, enter the requested authorization expiration date (this item is optional).	MM      DD /
7) Is this application "major" as defined in §1.929 of the Commission's rules when read in conjunction with the applicable radio service rules found in Parts 22 and 90 of the Commission's rules? (NOTE: This question Only applies to certain site-specific applications. See the instructions for applicability and full text of §1.929).	( <b>N</b> ) <b>Yes</b> <b>No</b>
8) Are attachments being filed with this application?	( <b>Y</b> ) <b>Yes</b> <b>No</b>

**Fees, Waivers, and Exemptions**

9) Is the applicant exempt from FCC application fees?	( <b>N</b> ) <b>Yes</b> <b>No</b>
	( <b>N</b> ) <b>Yes</b> <b>No</b>
	( <b>Y</b> ) <b>Yes</b> <b>No</b>
	Number of Rule Section(s): <b>1</b>
	( <b>N</b> ) <b>Yes</b> <b>No</b>

## Applicant Information

(13) FCC Registration Number (FRN):

0001568302

(14) Applicant/Licensee legal entity type: (Select One.)

- ☒ Individual ☐ Consortium ☐ General Partnership ☐ Limited Liability Company ☐ Trust ☐ Government Entity
- ☐ Limited Partnership ☐ Other (Description of Legal Entity)

(15) If the licensee name is being updated, is the update a result from the sale (or transfer of control) of the license(s) to another party and for which proper Commission approval has not been received or proper notification not provided? ( ) Yes ( ) No

(16) First Name (if individual):

MI:

Last Name:

Suffix:

(17) Legal Entity Name (if other than individual):

Copper Valley Wireless, Inc.

Tim Rennie

(19) P.O. Box:

3329

(21) City:

VALDEZ

(24) Telephone Number:

(907)835-8005

(25) FAX:

(907)835-8002

(26) E-Mail Address:

trennie@cvtc.org

## (27) Demographics (Optional):

Race:

☐ American Indian or Alaska Native☐ Asian☐ Black or African-American☐ Native Hawaiian or Other Pacific Islander☐ White

Ethnicity:

☐ Hispanic or Latino☐ Not Hispanic or Latino

Gender:

☐ Male☐ Female

## Real Party in Interest

(28) Name of Real Party in Interest of Applicant (if different from

applicant):

(29) FCC Registration Number (FRN) of Real Party in Interest:

Contact Information (if different from the applicant)

(30) First Name:

MI:

Last Name:

Suffix:

(31) Company Name:

Fletcher, Heald &amp; Hildreth, P.L.C.

(32) Attention To:

Mr. Quianzon

(33) P.O. Box:

And

/Or

(34) Street Address:

Eleventh Floor, 1300 North Seventeenth Street

(35) City:

Arlington

(38) Telephone Number:

(703)812-0400

(39) FAX:

(703)812-0486

(40) E-Mail Address:

Quianzon@fhhlaw.com

# Regulatory Status

41) This filing is for authorization to provide or use the following type(s) of radio service offering (enter all that apply):  
☐ Common Carrier ☐ Non-Common Carrier ☐ Private, internal communications ☐ Broadcast Services ☐ Band Manager

42) This filing is for authorization to provide the following type(s) of radio service (enter all that apply):  
☐ Fixed ☒ Mobile ☐ Radiolocation ☐ Satellite (sound) ☐ Broadcast Services  
☐ Interconnected Service? ☐ Y ☐ Yes ☐ No

## Alien Ownership Questions

44) Is the applicant a foreign government or the representative of any foreign government? ☐ N ☐ Yes ☐ No  
 45) Is the applicant an alien or the representative of an alien? ☐ N ☐ Yes ☐ No  
 46) Is the applicant a corporation organized under the laws of any foreign government? ☐ N ☐ Yes ☐ No  
 47) Is the applicant a corporation of which more than one-fifth of the capital stock is owned or voted by aliens or their representatives or by a foreign government or the representative thereof or by any corporation organized under the laws of a foreign country? ☐ N ☐ Yes ☐ No  
 48a) Is the applicant directly or indirectly controlled by any other corporation of which more than one-fourth of the capital stock is owned or voted by aliens, their representatives, or by a foreign government or representative thereof, or by any corporation organized under the laws of a foreign country? ☐ N ☐ Yes ☐ No  
 48b) If the answer to the above question is "Y", has the applicant received a ruling(s) under Section 310(b)(4) of the Communications Act with respect to the same radio service involved in this application? ☐ Yes ☐ No  
 If the answer to 48b is "N", attach to this application a date-stamped copy of a request for a foreign ownership ruling pursuant to Section 310(b)(4) of the Communications Act.

## Basic Qualification Questions

49) Has the applicant or any party to this application had any FCC station authorization, license or construction permit revoked or had any application for an initial, modification or renewal of FCC station authorization, license, or construction permit denied by the Commission? ☐ N ☐ Yes ☐ No  
 50) Has the applicant or any party to this application, or any party directly or indirectly controlling the applicant, ever been convicted of a felony by any state or federal court? ☐ N ☐ Yes ☐ No  
 51) Has any court finally adjudged the applicant or any party directly or indirectly controlling the applicant guilty of unlawfully monopolizing or attempting unlawfully to monopolize radio communication, directly or indirectly, through control or manufacture or sale of radio apparatus, exclusive traffic arrangement, or any other means or unfair methods of competition? ☐ N ☐ Yes ☐ No

## Aeronautical Advisory Station (Unicom) Certification

52) ( ) I certify that the station will be located on property of the airport to be served, and, in cases where the airport does not have a control tower, RCO, or FAA flight service station, that I have notified the owner of the airport and all aviation service organizations located at the airport within ten days prior to application.

## Broadband Radio Service and Educational Broadband Service Cable Cross-Ownership

53a) Will the requested facilities be used to provide multichannel video programming service? ☐ Yes ☐ No  
 53b) If the answer to question 53a is yes, does applicant operate, control or have an attributable interest (as defined in Section 27.1202 of the Commission's Rules) in a cable television system whose franchise area is located within the geographic service area of the requested facilities? ☐ Yes ☐ No  
 Note: If the answer to question 53b is "Y", attach an exhibit explaining how the applicant complies with Section 27.1202 of the Commission's Rules or justifying a waiver of that rule. If a waiver of the Commission Rule(s) is being requested, Item 11a must be answered "Y".

## Broadband Radio Service and Educational Broadband Service (Part 27)

54) (For EBS only) Does the applicant comply with the programming requirements contained in Section 27.1203 of the Commission's Rules? ☐ Yes ☐ No

Note: If the answer to Item 54 is "N", attach an exhibit explaining how the applicant complies with Section 27.1203 of the Commission's Rules or justifying a waiver of that rule. If a waiver of the Commission Rule(s) is being requested, Item 11a must be answered "Y".  
 55) (For BRS and EBS) Does the applicant comply with Sections 27.50, 27.55, and 27.1221 of the Commission's Rules? ☐ Yes ☐ No  
 Note: If the answer to Item 55 is "N", attach an exhibit justifying a waiver of that rule(s). If a waiver of the Commission Rule(s) is being requested, Item 11a must be answered "Y".

# General Certification Statements

- 1) The applicant waives any claim to the use of any particular frequency or of the electromagnetic spectrum as against the regulatory power of the United States because of the previous use of the same, whether by license or otherwise, and requests an authorization in accordance with this application.
- 2) If the applicant has sought a waiver of any such rule in connection with this application, it may make this certification subject to the outcome of the waiver request.
- 3) The applicant certifies that all statements made in this application and in the exhibits, attachments, or documents incorporated by reference are material, are part of this application, and are true, complete, correct, and made in good faith.
- 4) The applicant certifies that neither the applicant nor any other party to the application is subject to a denial of Federal benefits pursuant to §5301 of the Anti-Drug Abuse Act of 1988, 21 U.S.C. § 862, because of a conviction for possession or distribution of a controlled substance. This certification does not apply to applications filed in services exempted under §1.2002(c) of the rules, 47 CFR § 1.2002(c). See §1.2002(b) of the rules, 47 CFR § 1.2002(b), for the definition of "party to the application" as used in this certification.
- 5) The applicant certifies that it either (1) has current required ownership data on file with the Commission, (2) is filing updated ownership data simultaneously with this application, or (3) is not required to file ownership data under the Commission's rules.
- 6) The applicant certifies that the facilities, operations, and transmitters for which this authorization is hereby requested are either: (1) categorically excluded from routine environmental evaluation for RF exposure as set forth in 47 C.F.R. 1.1307(b); or, (2) have been found not to cause human exposure to levels of radiofrequency radiation in excess of the limits specified in 47 C.F.R. 1.1310 and 2.1093; or, (3) are the subject of one or more Environmental Assessments filed with the Commission.
- 7) The applicant certifies that it has reviewed the appropriate Commission rules defining eligibility to hold the requested license(s), and is eligible to hold the requested license(s).
- 8) The applicant certifies that it is not in default on any payment for Commission licenses and that it is not delinquent on any non-tax debt owed to any federal agency.

## Signature

56) Typed or Printed Name of Party Authorized to Sign

First Name:

David

57) Title:

CEO and GM of CVTC, parent corporation

Signature:

David

Dengel

58) Date:

03/28/2007

FAILURE TO SIGN THIS APPLICATION MAY RESULT IN DISMISSAL OF THE APPLICATION AND FORFEITURE OF ANY FEES PAID.

Upon grant of this license application, the licensee may be subject to certain construction or coverage requirements. Failure to meet the construction or coverage requirements will result in termination of the license. Consult appropriate FCC regulations to determine the construction or coverage requirements that apply to the type of license requested in this application.

WILLFUL FALSE STATEMENTS MADE ON THIS FORM OR ANY ATTACHMENTS ARE PUNISHABLE BY FINE AND/OR IMPRISONMENT (U.S. Code, Title 18, §1001) AND/OR REVOCATION OF ANY STATION LICENSE OR CONSTRUCTION PERMIT (U.S. Code, Title 47, §312(a)(1)), AND/OR FORFEITURE (U.S. Code, Title 47, §503).

**Wireless Telecommunications Bureau Schedule for  
Station Locations and Antenna Structures**

Approved by OMB  
3060 - 0798  
See 601 Main Form Instructions  
for public burden estimate

1) Action Requested: (    ) <u>Add</u> <u>Mod</u> <u>Del</u>		2) Location Number: _____	
(    ) <u>N</u> or <u>S</u>		(    ) <u>E</u> or <u>W</u>	
9) Street Address, Name of Landing Area, or Other Location Description: _____			
10) City: _____	11) State: _____	12) County/Borough/Parish: _____	
13) Elevation of Site AMSL (meters) ( 'a' in antenna structure example): _____	14) Overall Ht AGL Without Appurtenances (meters) ( 'b' in antenna structure example): _____	15) Overall Ht AGL With Appurtenances (meters) ( 'c' in antenna structure example): _____	
17) Location Number: (only for Area of Operation Code 'A')	18) Radius (km): _____	19) Airport Identifier: _____	20) Site Status: _____
21) Maximum Latitude (DD-MM-SS.S): _____ <b>NAD83</b> Use for rectangle only (No thwest co r) (    ) <u>N</u> or <u>S</u>		22) Maximum _____ (DD-MM-SS.S): _____ <b>NAD83</b> Use for _____ (North t c r) (    ) <u>E</u> or <u>W</u>	
23) Do you propose to operate in an area that requires frequency coordination with Canada? (    ) <u>Yes</u> <u>No</u>			
24) Description: (only for Area of Operation Code 'O') _____			
25) Number of Units:    ___ Hand Held    ___ Mobile    ___ Temporary Fixed    ___ Aircraft    ___ Itinerant			
26) Would a Commission grant of Authorization for this location be an action which may have a significant environmental effect? See Section 1.1307 of 47 CFR. (    ) <u>Yes</u> <u>No</u> If 'Yes', submit an environmental assessment as required by 47 CFR, Sections 1.1308 and 1.1311			
27a) If the site is located in one of the Quiet Zones listed in Item 27b of the Instructions, provide the date (mm/dd/yyyy) that the proper Quiet Zone entity was notified: _____			

Technical Data Schedule for the  
Cellular and Air-ground (Commercial Aviation)  
Radiotelephone Services (Part 22)

Cellular Unserved Area Information

1) Identify whether this is a New or Modification application for a Phase I unserved area or a Phase II unserved area as defined by 47 CFR Section 22.949(a). If so, complete Items 2 through 5, as applicable.

( )Phase I  
( )Phase II

2)  
Market Designator

3)  
Market Name

4)  
Sub-Market Designator

5)  
Channel Block

Control Points

6)  
Action  
A/M/D

7)  
Control Point  
Number

8)  
Location  
Street Address, City or Town County/Borough/Parish State

9)  
Telephone  
Number

Commercial Air-ground Technical Parameters (Antenna Data)

10)  
Action  
A/M/D

11)  
Channel Block

12)  
Location  
Number

13)  
Antenna  
Number

14)  
Height to Tip of Antenna AGL  
(meters)

15)  
Maximum ERP  
(watts)

## Cellular Radial Data

16) Action: (    ) <u>Add</u> <u>Modify</u> <u>Delete</u>		17) Location Number:	18) Antenna Number:
19) If this location contributes to the CGSA, are you requesting that the CGSA boundary be determined using an alternative method? If 'Yes', attach an exhibit explaining circumstances. (    ) <u>Yes</u> <u>No</u>			
Azimuth (degrees from true north)	20) Antenna Height AAT (meters)	21) Transmitting ERP (watts)	22) Distance to CGSA (kilometers)
0°			
45°			
90°			
135°			
180°			
225°			
270°			
315°			

I certify that (1) the maximum ERP for the proposed cellular base or repeater station will never exceed 500 Watts and (2) if the distance to the SAB as calculated in accordance with 47 CFR § 22.911 exceeds 79.1 km (45 miles) [Gulf of Mexico MSA] or 40.2 km (25 miles) [all other cellular markets], I have coordinated such use with the licensees of all affected cellular systems on the same channel block within 121 km (75 miles) and concurrence has been obtained from each licensee.

Attachment(s):

Type	Description	Date Entered
O	<u>Additional information in support of waiver</u>	03/28/2007
W	<u>Reauest for Limited Waiver</u>	02/01/2007



## Exhibit 1

### Reauest for Limited Waiver of Section 22.901(b) of the Commission's Rules

1. The Applicant, Copper Valley Wireless, Inc. ("Copper Valley"), pursuant to Sections 1.3 and 1.925(b)(3) of the Commission's Rules, hereby requests a limited waiver of the Rule Sections 22.901(b)(1) and 22.901(b)(2) requirements that it maintain analog transmission capability at, and provide analog service from, twelve of its thirteen cellular base stations until February 18, 2008. Consistent with the condition imposed by the Commission in its recent decision in Petition of ACS Wireless, Inc. for Limited Waiver of Analog Service Rule, Mimeo DA 06-2542, released December 18, 2006 ("ACS Wireless Analog Waiver Order"), Copper Valley will provide, until February 18, 2008, free bearing aid-compatible and emergency-only digital handsets to consumers residing in the affected service areas and who currently are reliant on analog hearing-aid compatible or emergency-only equipment.

#### I) Background

2. Copper Valley is the licensee of Cellular Radiotelephone Service Station KNKQ401, the Frequency Block B cellular system serving the Alaska 2(B4) – Bethel RSA. The system has thirteen cellular base station locations.

3. At present, Copper Valley's cellular system is exclusively analog, and utilizes switching and base station equipment manufactured by Plexsys at all of its cell site locations except the Whittier Cell Site.<sup>1</sup> The Plexsys equipment was installed in the early 1990s. The Plexsys equipment has been discontinued by the manufacturer, and is no longer being supported by the manufacturer. As a result, there is no source from which to obtain technical support, repair services or spare parts (including replacement circuit cards), and Copper Valley's spare parts inventory is shrinking.

4. Copper Valley has on band only a limited number of spare circuit cards for the Plexsys analog switching and base station equipment, and no spare TI interface circuit cards (all of which would be essential to keeping the Plexsys equipment up and running). Given the absence of technical support and the absence of spare circuit cards of specific types, a single point failure unquestionably will result in an unrecoverable system outage of the Plexsys analog system. Assuming the limited waiver requested herein is granted, Copper Valley will be able to cannibalize equipment removed from commercial service, as needed, to salvage sufficient circuit cards, TI interface cards and other spare parts to keep the remainder of the Plexsys analog equipment up and running until it is ultimately removed from service.

5. The Plexsys equipment currently utilized by Copper Valley is a first-generation, analog-only AMPS cellular system – and it may well be one of the few such systems still in operation in the United States. The companies that initially designed and

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<sup>1</sup> The Whinier is operated from a switch owned by ACS Wireless pursuant to an agreement between the two carriers.

manufactured, later acquired, and then provided technical service to the Plexsys cellular system equipment are no longer in business. Upon information and belief, Plexsys was acquired in 1995 or 1996 by COMSAT RSI of Herndon, Virginia, which subsequently discontinued all support services for the Plexsys product line. Two employees originally with Plexsys (and later with COMSAT RSI) subsequently started Blue Ridge Communications to provide technical support for the Plexsys product line, but ultimately declared bankruptcy and went out of business. Thus, no support services of any kind currently exist for the equipment.

6. As reflected in previous filings with the Commission in CC Docket No. 94-102 and CC Docket No. 95-116, Copper Valley is in the process of constructing a replacement system employing the Code Division Multiple Access ("CDMA") digital air interface; and has elected to deploy cellular system switching and base station equipment manufactured by ZTE Corporation. The cost of the replacement system (including equipment, installation and optimization) for the thirteen-cell system will be \$2,717,775.00. In addition, Copper Valley has paid additional costs and fees to date, as follows:

\$305,318.85 to Vantage Point Solutions  
     \$32,000.00 for RF Consulting  
     \$9,944.02 for antennas  
     \$127,582.22 for labor, benefits, overhead, helicopter rental, travel, etc.  
     \$474,845.09

The payments to the engineering consulting firm of Vantage Point Solutions are for engineering consulting and design services associated with the replacement system, and for its work in recommending appropriate equipment vendors. Thus, the total cost of the CDMA over-build project will **exceed** \$3.2 million, a weighty sum for a small company like Copper Valley.

7. The CDMA replacement system is being constructed in two phases. The first phase consists of the construction of CDMA replacement facilities at nine of the locations, i.e., the Valdez, Glennallen, Lake Louise, Willow Creek, Tolsona Ridge, Paxson, Naked Island, Slana and Whittier Cell Sites. The instant waiver is sought for all of these sites, with the exception of the Whittier Cell Site which will remain online in analog mode until at least February 18, 2008. The equipment for the nine sites has been delivered and installed, and is undergoing testing and optimization at this time. It is anticipated that these facilities will be placed into commercial service by mid to late March of 2007.

8. The second phase consists of the construction of replacement CDMA facilities at the remaining four cell sites. At present, construction is scheduled to commence during the Summer of 2007, with the facilities scheduled to be completed in July of 2007. Following a period of testing and optimization, the cells are scheduled to be placed into commercial service between September 1, 2007 and the end of February 2008.

9. Some of the cell sites are accessible only by helicopter due to, for example, the absence of paved roads. Helicopter charters are extremely expensive, and repair crews can be required to remain on site for several days – burdensome and potentially hazardous undertaking, particularly in extremely cold weather.

10. The monthly cost of operating the analog facilities at the sites (excluding the Whittier Cell Site) is \$48,392.00 (which translates to \$580,704.00 per year), itemized as follows:

- A) Valdez Cell Site: \$3,514.00;
- B) Glenallen Cell Site: \$2,674.00;
- C) Lake Louise Cell Site: \$3,953.00;
- D) Willow Creek Cell Site: \$1,943.00;
- E) Tolsona Ridge Cell Site: \$766.00;
- F) Paxson Cell Site: \$2,003.00;
- G) Slana Cell Site: \$1,279.00;
- H) Cordova Cell Site: \$4,914.00;
- I) Heney Ridge Cell Site: \$2,838.00;
- J) McCarthy Cell Site: \$8,222.00;
- K) Sourdough Ridge: \$5,335.00; and
- L) Naked Island: \$10,951.00.

11. Copper Valley's Cellular Geographic Service Area ("CGSA") embraces sparsely populated areas in the State of Alaska. **All** of Copper Valley's cell sites lie within the Valdez-Cordova Census Area, which has a 2000 Census population of only 10,195 persons yet which embraces a land area of 34,319 square miles. This equates to a population density of 0.297 persons per square mile for the Census Area. However, it should be noted that Copper Valley's CGSA covers only a small portion of the Valdez-Cordova Census Area.

12. Copper Valley is a very small Tier III Commercial Mobile Radio Service ("CMRS") carrier, as defined in the Commission's *E-911 Small Carriers Order to Star*, *CC Docket No. 91-102*, 17 FCC Rcd. 14841 (2002). As of December 31, 2006, Copper Valley had 1,142 subscribers to mobile service, and an additional 158 households that receive fixed service. Of those 158 households, 82 are in the McCarthy area and the

remaining 76 are in the Copper Basin area. For calendar year 2006, Copper Valley had gross revenues of \$1,213,281.00 as of October 31, 2006. For immediate past years, Copper Valley had gross revenues of \$1,665,009.00 in calendar year 2005; \$1,701,549.00 in calendar year 2004; \$1,704,500.00 in calendar year 2003; \$1,807,967.00 in calendar year 2002; and \$1,959,730.00 in calendar year 2001. As these figures demonstrate, annual gross revenues generally have been declining. The **net loss** for calendar year 2006 (as of October 31, 2006) is \$102,358.00; the net profit for calendar year 2005 was only \$97,790.00; for calendar year 2004 the net profit was only \$184,364.00; for calendar year 2003 the net profit was only \$179,663.00; with **net losses** of \$306,577.00 and \$656,442.00 for calendar years 2002 and 2001, respectively. Thus, Copper Valley is a very small CMRS carrier with minimal revenues and limited financial resources at its disposal.

13. Since December 2005, Copper Valley has been marketing tri-mode handsets that operate on the analog cellular, CDMA cellular and CDMA Broadband PCS air interfaces. Two of these handsets (the Nokia 6165i and Nokia 6265i) comply with the Commission's Hearing Aid Compatibility requirements codified in Section 20.19 of the Rules. One of these two models, the Nokia 6265i meets U3/T4 rating, and the other (the Nokia 6165i) meets a M4/T4 rating. These ratings equal or exceed the U3 (or M3) rating for radiofrequency interference and the U3T (or M3T) rating for telecoil coupling under ANSI Standard C63.19 mandated by the regulation.

14. In addition, all of the tri-mode handset models currently being activated on the system are E-911 Automatic Location Information ("ALI")-capable for the CDMA air interfaces.

15. There is only one battered women's shelter located in Copper Valley's service area, and it is located in Valdez, Alaska. For several years, Copper Valley has been donating two cellular handsets to the shelter. These handsets have been upgraded to the new tri-mode handsets at no cost to the shelter. Analog-only handsets are no longer in use by the shelter.

16. In addition, upon information and belief, none of the units on the system are being used by central station alarm companies for alarm monitoring purposes.

### **11) Waiver Standards**

17. The general waiver standards are codified in Sections 1.3 and 1.925(b)(3) of the Commission's Rules. Section 1.3 of the Commission's Rules states, in relevant part, that "[a]ny provision of the rules may be waived by the Commission on its own motion or on petition if good cause therefore is shown." Section 1.925(b)(3) of the Rules states that the "Commission may grant a waiver request if it is shown that: (i) [t]he underlying purpose of the rule(s) would not be served or would be frustrated by application to the instant case, and that a grant of the requested waiver would be in the public interest; or (ii) [i]n view of unique or unusual factual circumstances of the instant case, application of the rule(s) would be inequitable, unduly burdensome or contrary to the public interest, or the applicant has no

reasonable alternative.” The courts have held that a rule waiver is appropriate “if special circumstances warrant a deviation from the general rule and such deviation will serve the public interest.” *Northeast Cellular Telephone Co. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990) *citing* *WAIT Radio v. FCC*, 418 F.2d 1153 (D.C. Cir. 1969), *appeal after remand*, 459 F.2d 1203 (D.C. Cir. 1972), *cert. denied*, 409 U.S. 1027 (1972). Under *WAIT Radio* and *Northeast Cellular Telephone Co.*, a rule waiver “may be granted in instances where the particular facts make strict compliance inconsistent with the public interest if applied to the petitioner and when the relief requested would not undermine the policy objective of the rule in question.”” *Hearing Aid Compatible Telephones*, *WT Docket No. 01-309, Order on Reconsideration and Further Notice of Proposed Rulemaking*, FCC 05-122, 20 FCC Rcd. 11221 (rel. June 21, 2005), at Para. No. 50 n. 158.

### **III) The Analog Sunset**

18. In its Year 2000 Biennial Review, the Commission amended its Rules to eliminate the requirement that cellular carriers provide analog service, following expiration of a five-year transition period which will occur on February 18, 2008. *Year 2000 Biennial Review – Amendment of Part 22 of the Commission’s Rules*, *WT Docket No. 01-108, Report and Order*, 17 FCC Rcd. 18,401 (2002). The Commission found that it could eliminate the analog retention rule because it had substantially achieved its purposes. *Id.*, Para. No. 8. When it originally established the cellular rules in the early 1980s, the Commission required all cellular carriers to employ the analog air interface to accomplish two goals: 1) to enable subscribers of one system to use their existing handsets in a different part of the country (roaming); and 2) to enhance competition by eliminating the customers’ need to acquire different handsets in order to switch between the two competing carriers in the home market. *Id.*, Para. No. 5.

19. By 2002, circumstances had materially changed. In particular, the Commission determined that the mandatory analog service rule now harmed competition because it required cellular licensees to bear operation and maintenance costs for two separate cellular networks. *Id.*, Para No. 12. In addition, the Commission determined that customer access to reasonably priced equipment and roaming no longer depended upon the analog requirement. *Id.*, Para. Nos. 13-14. The Commission recognized that smaller and regional cellular carriers were shifting their systems to digital air interface technology, and that the cellular carriers would be competitively disadvantaged by the analog requirement as Broadband PCS carriers not subject to the requirement deployed services in rural areas. *Id.*, Para. Nos. 15-16.

20. At the same time, the Commission determined that the public interest favored adopting a five-year transition period (ending on February 18, 2008), rather than immediately eliminating the Rule. *Id.*, Para. No. 22. The Commission was concerned that the immediate elimination of the analog requirement could adversely impact certain classes of consumers: such as unsubscribed subscribers of emergency-only cellular telephones and persons with hearing disabilities, both of whom could be left without readily available digital alternatives. *Id.*, Para. No. 22. The Commission assumed that these issues would decrease in due course with technological advances over the five-year sunset period. More

specifically, the Commission predicted that the use of analog 911-only handsets would decline as customers switched to digital service. *Id.*, Para. No. 25. Increasingly, customers would give used digital handsets to donation programs, and unsubscribed users would use digital or dual-mode handsets for emergency purposes. *Id.*, Para. No. 25. In addition, the Commission predicted that the industry would develop accessibility solutions for the hearing-impaired. *Id.*, Para. No. 29.

21. As the Commission anticipated in 2002, advances in technology have lessened the impact of these issues. Digital service is now widely available. Indeed, as a general matter, consumers cannot even purchase analog-only handsets anymore. Consumers and camers are contributing used and new digital handsets to donation programs; and camers now offer digital hearing aid-compatible handsets, due to Commission requirements. Indeed, digital handsets are increasingly in the hands of the at-risk, and hearing aid-compatible digital handsets are becoming more and more commonplace.

#### IV) A Waiver Is Clearly Warranted

22. The reasons in support of the instant request for limited waiver of Rule Sections 22.901(b)(1) and (2) can be concisely stated a) the very real potential that the aging analog equipment will irreparably fail; and b) the fact that the interests of protected user groups will be met. More specifically, the current Plexsys analog equipment is very old and has been discontinued by the manufacturer, and there are no available sources of replacement equipment, spare parts or support services to keep the system running in the event the equipment fails. Among other things, there are **no** spare TI interface circuit cards for the equipment in Copper Valley's possession, and none can be obtained. Given the absence of technical support and the absence of spare circuit cards of specific types, a single point failure unquestionably will result in an unrecoverable system outage. A CDMA replacement system is under construction and will be **fully** operational prior to February 18, 2008. The needs of emergency-only users and the hearing impaired have been met through Copper Valley's marketing of hearing aid-compatible CDMA handsets and the availability of CDMA handsets for emergency-only users; and Copper Valley will provide, until February 18, 2008, free hearing-aid compatible and emergency-only CDMA digital handsets to consumers residing in the affected service areas and who currently are reliant on analog hearing-aid compatible or emergency-only equipment. In addition, based on Copper Valley's records and other available information, there are no central station alarm subscribers that will be adversely affected by grant of the requested waiver. *See public Notice, entitled "Wireless Telecommunications Bureau Seeks Comment on Petition for Rulemaking to Extend Cellular Analog Sunset Date,"* DA 06-2559, released December 20, 2006. Furthermore, all of the hi-mode handset models currently being activated on the system are E-911 ALI-capable for the CDMA air interfaces.

23. Under the facts of this case, it is abundantly clear that the underlying purpose of Rule Sections 22.901(b)(1) and (2) would not be served or would be frustrated by continued application here, and that a grant of the requested limited waiver would be in the public interest, within the meaning of Section 1.925(b)(3)(i) of the Commission's Rules. The

purpose of the five-year analog sunset period was to provide the industry adequate time to develop digital air interface subscriber equipment to meet the specialized needs ~~of~~ certain affected user groups, particularly the hearing-impaired and emergency-only users, and to provide adequate time for members of those user groups to obtain digital equipment. Those objectives are met here. In addition, all of the tri-mode handset models currently being activated on the system are E-911 ALI-capable for the CDMA air interfaces.

24. It is equally clear that in view of the unique or unusual factual circumstances, continued application of Rule Sections 22.901(b)(1) and (2) would be inequitable, unduly burdensome or contrary to the public interest. Under this standard, grant of the requested limited waiver clearly will serve the public interest. A waiver will relieve Copper Valley of any regulatory requirement to maintain in operation aging and obsolete analog equipment that cannot be repaired or replaced, a truly inequitable and unduly burdensome requirement. Indeed, in the event of an equipment failure, a single point failure unquestionably will result in an unrecoverable system outage of the analog system. Stated another way, if the equipment fails the failure will be permanent.<sup>2</sup> Indeed, basic principles of administrative law prohibit the Commission from compelling carriers to do the impossible. *See, e.g., Alliance for Cannabis Therapeutics v. DEA*, 930 F.2d 936,940 (D.C. Cir. 1991); *Hughey v. JMS Development Corp.*, 78 F.3d 1523, 1530 (11<sup>th</sup> Cir. 1996). Furthermore, repairs can be expensive and dangerous to achieve. Some of the cell sites are accessible only by helicopter due to, for example, the absence of paved roads. Helicopter charters are extremely expensive, and repair crews can be required to remain on site for several days – a burdensome and potentially hazardous undertaking, particularly in extremely cold weather. Copper Valley clearly has no reasonable alternative to requesting the instant limited waiver.

25. Copper Valley recognizes that, as a general matter, the Commission would *not* ordinarily accept cost considerations as a sufficient basis to support a waiver of the analog service requirement. *ACS Wireless Analog Waiver Order*, Para. No. 8. However, in view of its small size and limited financial resources, Copper Valley respectfully submits that consideration of cost factors, even if not determinative, is uniquely appropriate here, and that cost factors should be accorded great weight in the Commission's consideration of the instant waiver request.

26. As noted above, Copper Valley is an extremely small carrier with only 1,142 mobile subscribers and an additional 158 households receiving fixed point service – an extremely small customer base. Over the past six years, gross revenues generally have been declining. More recently, gross revenues were \$1,213,281.00 as of October 31, 2006; and \$1,665,009.00 for Calendar Year 2005. The net loss for the most recent year was \$102,358.00, as of October 31, 2006. The net profit for 2005 was only \$97,790.00. Net profits for 2003 and 2004 were modest, while 2001 and 2002 experienced significant net losses. The total cost of the equipment replacement project will exceed \$3.2 million – a hefty sum for a very small company, such as Copper Valley.

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<sup>2</sup> As the equipment replacement project proceeds, analog equipment removed from service can be cannibalized for sufficient parts to keep the remainder operational.

27. Adding to these financial burdens, the expenses associated with operating the analog facilities will add an additional \$580,704.00 in annual costs to Copper Valley's operating expenses. This is a hefty sum when compared with annual gross revenues and, even more tellingly, the annual profits or losses produced by the system. Given Copper Valley's modest financial posture, these added costs are potentially ruinous and could drive Copper Valley out of business. While the Commission intended that licensees bear the cost of operating duplicate analog and digital facilities until the February 18, 2008 sunset, ACS Wireless Analog Waiver Order, Para. No. 8, it necessarily assumed that the licensees would be financially able to do so without jeopardizing their continued existence. Here, this assumption is in question. The United States Court of Appeals for the District of Columbia Circuit views with extreme disfavor Commission regulatory requirements which require a wireless carrier to shut down all or part of its system. Petroleum Communications, Inc. v. FCC, 22 F.3d 1164 (D.C. Cir. 1994). Copper Valley's financial inability to operate duplicate analog facilities is a function of its extremely small size and modest revenues, and the demographics of its service area dictate that it will remain extremely small with modest revenues in the future – which is clearly a circumstance over which Copper Valley has no control.

28. In view of the foregoing, it is submitted that grant of the requested limited waiver of Rule Sections 22.901(b)(1) and 22.901(b)(2) would serve the public interest, convenience and necessity.



## **Exhibit 2**

### **Amendment to Request for Limited Waiver of Section 22.901(b) of the Commission's Rules**

1. The Applicant, Copper Valley Wireless, Inc. ("Copper Valley"), hereby amends its pending application requesting a limited waiver of Sections 22.901(b)(1) and 22.901(b)(2) of the Commission's Rules to formally provide additional information to Commission's staff.

2. Copper Valley hereby provides a listing of the mechanisms (*e.g.*, billing inserts, certified mail notifications, etc.) that it intends to use to notify subscribers of its decision to terminate analog service prior to the February 18, 2008 analog sunset date (assuming the waiver request is granted). Copper Valley also sets forth the mechanisms that will be used to transfer the customers to the new Code Division Multiple Access ("CDMA") facilities or, stated another way, how Copper Valley will get the CDMA handsets into the hands of the customers.

#### **I) Customer Notification And Marketing**

3. Copper Valley will market directly to its analog customers through billing inserts, direct mailings separate and apart from billing inserts, telephone calls and newspaper advertisements notifying existing analog customers that analog service will be discontinued in a given area on a date certain in favor of an exclusively digital service.<sup>1</sup>

4. In addition, as a further incentive to migrate from analog to digital service, Copper Valley will offer its analog customers promotional incentives on calling plans and replacement digital subscriber equipment, ranging from discounts on replacement subscriber equipment up to and including free replacement handsets. In this regard:

A) Copper Valley recently introduced new calling plans that offer more attractive rates for digital service than offered under the legacy analog calling plans. The new calling plans (and more attractive rates) are available only for digital service.

B) Add-on partner lines are being offered for digital service for an additional \$10.00 per month that share minutes-of-use with the customer's main account calling plan for no additional monthly airtime charge.

C) Copper Valley offers a legacy analog mobile-to-mobile feature as well as a legacy nights and weekends feature, features which (if necessary) will be offered at either

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<sup>1</sup> Sending notifications by certified mail, return receipt requested generally is not a viable option in Copper Valley's area. As a general matter, the customers are not home when the postal service attempts delivery, thus many times requiring the customers to drive long distances (in some cases four to six hours) to the post office to sign for the letter. Most simply fail to go to the post office, and in these cases sending notices by certified mail accomplishes nothing. In addition, there is a fear that the customers who actually go to the post office to get the certified mail letter will find the experience very irritating.

a discounted rate or for free for a prescribed period of time as a further inducement for customers to migrate to digital service.

D) Customers are being offered free system access for up to three months to migrate to digital service; and, in the future, Copper Valley expects to waive the activation fee for existing customers migrating to the digital platform.

5) With respect to free replacement handsets, the following applies:

A) At present, free CDMA replacement handsets are being offered to all existing analog customers who transfer their service and rate plans to the CDMA platform. A two year minimum service contract applies.

B) At present, all new customers who take a minimum two year service contract are being provided with a CDMA handset free of charge.

C) Commencing August 1, 2007, free CDMA handsets will be provided to all analog customers regardless of their then current rate plan or contract commitment status. No minimum duration service contract will be required.

D) In addition, it should be noted that free CDMA handsets are provided to all customers with 911 emergency calling needs, and no service commitment or contract is required. At present, Copper Valley has received no Public Safety Answering Point requests for E-911 Phase I or Phase II service.

## **II) Transfer Of Customers To CDMA Facilities**

6. Copper Valley's customer service personnel will contact, by telephone, all customers who do not yet have CDMA handsets to coordinate the pick-up or delivery of the new CDMA handsets.

7. Customers will be encouraged to pick up the new CDMA handsets at a Copper Valley retail store. However, Copper Valley will arrange direct delivery of new CDMA handsets to customers who are unable (or unavailable) to obtain them by visiting one of the retail stores. Direct delivery will be effected by shipping the units to the customers at their mailing address of record via the U. S. Postal Service, postage prepaid. The handsets will be pre-tested prior to shipment, and will be pre-programmed with the customer's telephone number and otherwise programmed to operate on the Copper Valley CDMA facilities upon receipt by the customer so that visiting a retail store will not be required.

8. Copper Valley will coordinate transfer of service from the analog to the CDMA facilities for each customer to prevent unnecessary disruptions in service to the customers. Customers who receive their CDMA handsets via U. S. Postal Service

delivery will not be transferred to the CDMA facilities until they are contacted by telephone to confirm their receipt of the new handsets. Only at that time will the customer be transferred from the analog to the CDMA facilities. The transfer of service will essentially consist of deactivating the customer's access to the analog facilities, and confirming that the new CDMA unit is operational.

9. There are two categories of fixed-point analog customers, taking into account prevailing physical accessibility conditions in the State of Alaska. The first category consists of those customers who reside on the road system. The second category consists of those customers who reside off the road system in remote locations that are accessible only by foot, snowmobile, boat or airplane.

10. For fixed-point customers who are on the road system and under long standing practice, Copper Valley technicians currently travel to their locations to perform any needed maintenance on, or replacement of, the subscriber units. Consistent with this practice, to transfer these customers' service from the analog to the CDMA facilities, Copper Valley will schedule a service appointment with the customer and send a technician to their location to replace the analog unit with a CDMA unit. This will be performed at no cost to the customer.

11. For fixed-point customers who reside off the road system, Copper Valley has offered for a long time to new customers a "Phone-in-a-Box" kit, which consists of a self-install kit containing both the pre-assembled unit and all of the materials and instructions necessary for the customer to install and activate the fixed-point service unit at the customer's remote location. Copper Valley pre-tests the unit and programs the telephone number into the unit. The unit is then self-installed by the customer. This has traditionally required the customer to visit a Copper Valley retail store to obtain the kit because, at that particular point in time, the customer has no telephone service. The pre-assembled unit is easy to install, and the self-install procedure has run smoothly over the years. It should be noted that Alaska residents (particularly those in remote locations) are, of necessity, extremely self-reliant and possess all of the skills necessary to install the unit and antenna and make the unit operational.

12. For existing analog fixed-point customers who reside off the road system, Copper Valley will provide a replacement CDMA self-install "Phone-in-a-Box" kit. Depending upon the customer's preference, the customer can either obtain the kit from a Copper Valley retail store, or Copper Valley will send the kit to the customer via private carrier or the U.S. Postal Service, delivery or postage charges pre-paid.<sup>2</sup> The units will be pre-tested prior to shipment, and will be pre-programmed with the customer's telephone number and otherwise programmed to operate on the Copper Valley CDMA facilities. The CDMA replacement kit will be provided at no cost to the customer. To prevent unnecessary disruptions in service to the customer, Copper Valley will coordinate

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<sup>2</sup> In remote areas, there is often limited delivery of the mail, so most people have Post Office boxes. Private carrier deliveries to remote areas are often by air freight, *i.e.*, using small air carriers or charter flights.

with the customer the transfer of the service from the analog to the CDMA facilities in the manner discussed in Paragraph No. 8, above.

13. In view of the foregoing and the showings contained in the initial application, it is submitted that grant of the requested limited waiver **of** Rule Sections 22.901(b)(1) and 22.901(b)(2) would serve the public interest, convenience and necessity.